

# Memorandum



**Date:** November 08, 2005

INLUC  
Agenda Item No. 2 (C)

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** George W. Burgess  
County Manager

**Subject:** Resolution Authorizing Execution of a Lease Agreement Between Miami-Dade County and Florida East Coast Railway Co., LLC (FEC) for the Continued Use of a Pedestrian Safety Walkway and Fence Along the East Side of NE Second Avenue, between NE 6 and NE 7 Street

## RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing the execution of a Lease Agreement between Miami-Dade County and Florida East Coast Railway Co., LLC (FEC) for the continued use of a pedestrian safety walkway and fence along the east side of NE 2 Avenue, between NE 6 and NE 7 Street. The pedestrian safety walkway provides protection to the general public walking along NE 2 Avenue.

## BACKGROUND

In September 1982, a ten (10') foot wide and seventy-five (75') foot long, concrete sidewalk was constructed by the City of Miami along the east side of NE 2 Avenue. The sidewalk was constructed to provide continuity along an area where sidewalk was already in existence to both the north and south of the FEC Railway property, located between NE 6 Street and NE 7 Street.

The City of Miami entered into a Lease Agreement with the FEC which specified an annual fee to be paid by the City for leasing the area where the sidewalk had been constructed. The City's Lease Agreement was terminated on September 1986, pursuant to County Commission Resolution No. R-809-82, adopted June 15, 1982, establishing NE 2 Avenue, between NE 2 Street and NE 54 Street, as a County maintained roadway. The Lease Agreement was rewritten for Miami-Dade County as the new lessee at an annual fee of \$250.00 and was approved by Resolution No. R-128-88. A subsequent Resolution R-364-99, adopted April 13, 1999, increased the annual rental fee to \$350.00 which included the cost of insurance to protect the railroad company against any claims arising from the use of the walkway.

The new Lease Agreement to be executed with FEC reflects an increase of the annual rental fee to \$450.00 for the continued use of the leased property and to provide insurance coverage which protects the railway company against any claims.

  
\_\_\_\_\_  
Assistant County Manager

10/18/05  
\_\_\_\_\_  
Date



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** December 6, 2005

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT FOR A STRIP OF LAND ALONG THE EAST SIDE OF N.E. SECOND AVENUE, BETWEEN NE 6 STREET AND NE 7 STREET, BEING USED AS PART OF A CONTINUOUS PEDESTRIAN WALKWAY ON FLORIDA EAST COAST RAILWAY CO., LLC PROPERTY; AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE CANCELLATION PROVISIONS CONTAINED THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves the Lease Agreement between Miami-Dade County and Florida East Coast Railway Co. LLC (FEC) for the lease of a strip of land on FEC property along the east side of NE Second Avenue, between NE 6 Street and NE 7 Street, for the continued use of a pedestrian safety walkway, in substantially the form attached hereto and made a part hereof; authorizes the County Manager to execute said Lease Agreement for and on behalf of Miami-Dade County, Florida; and to exercise the cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner  
, who moved its adoption. The motion was  
seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of December 2005. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency.

By: \_\_\_\_\_  
Deputy Clerk

## REAL ESTATE LEASE

Florida East Coast Railway, L.L.C.; a limited liability company existing under the laws of the State of Florida and having an address of One Malaga Street, St. Augustine, Florida 32084 (hereinafter "Lessor" or "Railway") hereby leases to **MIAMI DADE COUNTY**, a political subdivision of the State of Florida, acting through its Board of County Commissioners, whose business address is Public Works Department, Suite 1510, 111 N. W. 1<sup>st</sup> Street, Miami, Florida 33128-1970, (hereinafter "Lessee"), the following described property:

### Leased Premises:

A rectangular-shaped parcel of land on Railway's Right-of-Way for its P & O Dock Spur tracks in Miami, Dade County, Florida, said parcel measuring 10 feet easterly and westerly by 75 feet northerly and southerly; with westerly and southerly lines of said parcel commencing at a point located on Railway's southerly Right-of-Way line and the easterly line of N.E. Second Avenue, Miami, Florida, with westerly line of said parcel continuing northerly and coinciding with said easterly line of said N.E. Second Avenue for a distance of 75 feet; with southerly line of said parcel continuing easterly and coinciding with Railway's said southerly Right-of-Way line for a distance of 10 feet; easterly line of said parcel being parallel with and 10 feet distant easterly from said westerly line; northerly line of said parcel being parallel with and 75 feet distant northerly from said southerly line.

All as shown on Railway's Drawing No. A-897, dated October 27, 1986, attached hereto and made a part hereof and collectively referred to as Leased Premises.

6858

County: Dade

Contract Type: 41

File: 366-22-19

1. Term

The term of this lease shall date from September 26, 2005 and until September 25, 2006 provided that Lessee shall have the option to extend the lease after the expiration of the term specified in this lease, or any renewals of such terms, by furnishing Lessor advance written notice of its intent, subject to same terms and conditions as herein contained in this lease. Lessee shall have no expectation of renewal and that the term of this lease is only for the time specified herein, subject always to the termination provisions and regardless of the length of time that lessee has occupied the leased Premises, or the construction by Lessee of any buildings, structures, works, paving, barricades or personal property placed on the leased premises.

2. Rent

(1) Annual Rent

During the term of this lease, the Lessee shall pay to the Lessor an annual rental in advance on or before the 1st day of each year in the amount of **\$450.00**, plus Florida Sales and Use Tax. Annual rental shall be paid to FEC's office at One Malaga Street, St. Augustine, Florida 32084 or as otherwise indicated on invoices.

(2) Additional Charges

If Lessee's presence or activities on the Lease Premises causes Lessor to incur costs for cleaning, trash removal, inspections, or like expenses, Lessee agrees to pay such cost to Lessor on demand, the amount of such costs incurred by Lessor. Notwithstanding the foregoing, Lessee will pay on demand the greater of the actual inspection costs or \$350.00 for any inspection conducted by Lessor or its agents on the Leased Premises the results of which show, in Lessor's sole determination, a violation of this Lease of any federal, state or municipal law or regulation. Lessee shall also pay on demand the greater of the actual inspection costs or \$350.00 for any follow-up inspections related to the violation.

(3) Late Charge

If any annual Rent or other payment due under this Lease is not received by Lessor within ten (10) days of the due date of such payment, Lessee shall pay, in addition to such payment a late charge equal to the greater of 5% of the payment which is past due or Two Hundred Fifty and No/100 Dollars (\$250.00). If any payment due from Lessee shall remain overdue for more than ten (10) days, interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of eighteen (18%) percent per annum or the highest rate permitted by law. Interest on the past due amount shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Lessor.

3. Utility Charges, Taxes, Document Stamps

(a) Utility Charges

All charges on the premises for all utilities, including but not limited to water, electricity, gas, heat and sewers and for taxes on Lessee's improvements shall be paid by the Lessee within thirty (30) days after date of invoice.

(b) Ad Valorem Taxes

Lessee agrees to pay, within thirty (30) days after presentation unto Lessee by Railway, bills for all special assessments, ad valorem taxes and any other taxes of whatsoever kind or nature levied by the United States of America, State of Florida, any county, municipality or special taxing district organized and existing under the laws of the State of Florida, upon any of the property herein leased on a pro-rated basis. All taxes and special assessments, payable on an annual basis, are to be pro-rated by the parties hereto for the year during which this lease is made, as well as the year in which the same may be terminated.

(c) Document Stamps

Lessee shall pay any necessary documentary stamp taxes required to be affixed to this lease under the laws of the United States of America, the State of Florida, or both.

(d) Sales and Use Tax, Personal Property Tax

Lessee will pay the Florida Sales and Use Taxes levied under Chapter 212.02 F.S., as amended, or other applicable statutes, and shall pay all personal property taxes that may be levied or assessed against the personal property of the Lessee.

4. As Is, Maintenance

The Lessor MAKES NO WARRANTY, REPRESENTATION OR UNDERTAKING, EXPRESSED or implied, to the condition of the Leased Premises for the proposed use and the Lessee, at its sole cost and expense, hereby agrees to put said premises in such condition for its proposed use and to maintain them in their entirety. The property is leased as it currently exists in an AS IS condition and the Lessee, who has inspected the premises prior to entering into this Lease Agreement, accepts the premises as is and shall henceforth be responsible for any and all repairs and maintenance to the Land, Buildings, facilities and improvements located thereon. Lessee shall perform all work required for the preparation of the Leased Premises for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the Leased Premises as now being in fit and Leasable condition for all purposes of Lessee.

Lessee will keep the leased property or premises free and clear of any and all trash, brush and debris of any kind, so as to prevent the trash, brush and debris from becoming dangerous, inflammable or objectionable. Railway shall have no duty to inspect or maintain any the Leased Premises during the term of this lease.

Lessee shall have no claim of any kind or description for damages to goods, wares or merchandise on the Leased Premises from any cause whatsoever, INCLUDING FIRE, STORM, CASUALTY OR ACT OF GOD, NEGLIGENCE OF LESSOR UNLESS CAUSED BY THE WILLFUL OR INTENTIONAL ACTS OF LESSOR.

5. Lessee's Compliance With Law

(a) Zoning and Use Regulation

Lessee will release Railway from any loss, claim or damage which Lessee may sustain arising directly or indirectly by reason of either existing or future zoning or other regulations promulgated by any governmental agency which may adversely affect use by Lessee of the lands hereinabove described. Lessee shall assume all responsibility for procuring or complying with any ordinance, resolution, order, permit, consent or other such regulation, promulgated by any governmental agency whatsoever, for building or otherwise, required for the use of the leased property hereinabove described or for the construction of any facilities upon such leased property, and shall indemnify and hold harmless Railway from any loss, claim or damage suffered by Railway for Lessee's failure to properly and completely perform this responsibility,

(b) Other Regulation

The Lessee shall comply with all federal, state and municipal regulations as to health, safety, zoning, police, nuisance, fire, water, liquid, solid waste and hazardous waste, highways sidewalks and other matters, and with the regulations of all persons or corporations supplying water, gas, heat, electricity or steam on the premises, and shall indemnify the Lessor against all fines, penalties, expense, damages and costs for violation thereof. Lessee is solely responsible for obtaining any and all federal, state and local licenses, permits, or other authority for its use of the premises and shall indemnify and hold harmless Lessor against all fines, penalties, expenses, damage and costs for violation of or failure to comply with any federal, state or local laws or regulations.

6. Hazardous Materials

Lessee will prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Leased Premises except that Hazardous Materials may be used in the Leased Premises as necessary for the customary maintenance of the Leased Premises provided that same are used, stored and disposed of in strict compliance with applicable laws. For purposes of this provision, the term "Hazardous Materials" will mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any federal, state or local laws.



If Lessee's activities at the Leased Premises or Lessee's use of the Leased Premises (a) results in a release of Hazardous Materials that is not in compliance with Applicable Laws or permits issued thereunder; (b) gives rise to any claim or requires a response under common law or Applicable Laws or permits issued thereunder; (c) causes a significant public health effect; or (d) creates a nuisance, then Lessee shall, at its sole cost and expense: (i) immediately provide verbal notice thereof to Lessor as well as notice to Lessor in the manner required by this Lease, which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (ii) promptly take all action in response to such situation required by Applicable Laws, provided that Lessee shall first obtain Lessor's approval of the non-emergency remediation plan to be undertaken.

7. Inspection by Lessor

Lessor shall have the right, at reasonable times and upon reasonable prior notice to Lessee, to enter the Leased Premises, the Land or the Buildings for the purpose of examining and inspecting the condition of the Leased Premises, Land or Buildings and to evaluate Lessee's compliance with the terms and conditions of this Lease.

8. Signs

Lessee shall not place any signs on the Leased Premises, Land or Buildings except with the prior written consent of the Lessor, including consent as to location and design, which may be withheld in Lessor's sole discretion. Any and all such approved signs shall be installed and shall be maintained by Lessee, at its sole cost and expense and shall be in compliance with all Applicable Laws. Lessee shall be responsible to Lessor for the installation, use, or maintenance of said signs and any damage caused thereby. Lessee agrees to remove said sign prior to termination of the Lease and upon such removal to repair all damage incident to such removal.

9. INDEMNIFICATION OF THE PARTIES

A. To the extent allowed by law, and subject to the limitations of Florida State Statutes 768.28, to indemnify, save and hold harmless Railway, its agents, servants and employees from and against all loss, claims, costs charges, expense, suits, damage and judgments, which they may suffer, sustain or in anywise be subjected to, or for which it may be held liable on account of the death, personal injuries, damage or loss to any person or persons, including employees, agents and officers of Railway and of Lessee, directly or indirectly arising out of or on account of the leasing to or use of the property by Lessee; whether due or claimed to be due by the joint negligence of Railway, its employees, agents or servants, or otherwise. In the event that a loss or damage is due to or claimed to be due by the partial negligence of Lessee, then the Lessee's liability for indemnity to the Railway extends only to that portion of negligence, which is attributable to the Lessee. In all cases, the Lessee's liability under this clause will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

B. To the extent allowed by law, and subject to the limitations of Florida Statutes 768.28, to indemnify, save and hold harmless Railway, its agents, servants and employees from and against all loss, claims, costs, charges, expense, suits, damage and judgments, which they

may suffer, sustain or in anywise be subjected to, or for which it may be held liable on account of any loss or damage caused in any manner to any of Lessee's buildings, structures, works and any personal property whatsoever of Lessee, situated, placed, kept or stored on, in or near the property or premises hereby leased, as well as on account of loss or damage to any personal property whatsoever, not owned by Lessee, whether owned by Railway or by others, arising directly or indirectly out of or on account of the leasing to or use by Lessee of the property hereby leased; whether due or claimed to be due by the joint negligence of Railway, its employees, agents or servants or otherwise. In the event that a loss or damage is due to or claimed to be due by the partial negligence of Lessee, then the Lessee's liability for indemnity to the Railway extends only to that portion of negligence, which is attributable to the Lessee. In all cases, the Lessee's liability under this clause will be governed by the limitations and to the extent provided in Section 768.28, Florida Statutes.

C. To the extent allowed by law, and subject to the limitations of Florida Statutes 768.28, to indemnify Railway for all loss, claims, damage, costs and expenses, including attorneys' fees and environmental cleanup costs arising from Lessee's presence upon or use of the leased premises which causes the premises to become contaminated by toxic or hazardous substances or wastes above levels which exceed the allowable levels as set forth in local, state or federal laws and regulations. Railway shall have the right, at reasonable times during the term of this Lease, upon prior notice to Lessee and accompanied by a representative of Lessee (except in cases of emergency) to enter the leased property, including any building or structure that may at any time be on the leased property, for the purpose of examining and inspecting the condition of the leased property and to ensure Lessee's compliance with the terms and conditions of this Lease.

D. Lessee acknowledges that use of Railway's property involves risk of loss or damage. Notwithstanding anything in this agreement to the contrary, Lessee hereby expressly assumes all risks of injury or death to Lessee's employees, contractors, agents and invitees and damage to or destruction of Lessee's property resulting from or arising from Railway's operations, REGARDLESS OF THE SOLE OR JOINT NEGLIGENCE OF RAILWAY. Lessee will defend, indemnify, and save Railway harmless from and against losses from injuries or death to Lessee's employees, contractors, agents and invitees while on Railway's property or seeking ingress or egress from Railway's property leased hereunder and from damage to or destruction of Lessee's property.

#### 10. Purpose of Lease

The premises shall be used only for the purpose of **Sidewalk Encroachment**.

#### 11. No Interference with Railway Operations, Reservation of Rights

The Lessee's use and/or maintenance of the Leased Premises shall not in any way, or at any time, interfere with or obstruct the use of the Leased Premises or of the remaining land of the Lessor by the Lessor, its agents, employees, patrons or assigns. The Lessee will not discharge surface water upon the remaining property and railroad tracks of the Lessor and Lessee hereby expressly releases the Lessor from liability for any surface water flowing naturally from the remaining property herein leased. Lessee further agrees not to alter the leased premises so as to cause water to drain or flow onto Lessor's property nor so as to cause an undermining of the adjacent property owned by Lessor.

Lessee shall not have or assert any claim or demand whatsoever for compensation or damages to the Leased Premises or to any improvements now or hereafter erected or property located thereon which may be caused by the operation, maintenance, repair, relocation, or removal of Lessor's railroad or which may be caused by vibration resulting from the operation of said railroad and Lessee releases Lessor from any liability for any such damage.

No right of way, expressed or implied, over remaining property of Lessor for the benefit of the lease premises is granted by this lease agreement other than as set forth above in the definition of the Leased Premises.

It is understood between the parties hereto that Railway reserves unto itself, its successors, permittees, licenses, or other persons, the right to construct and maintain other facilities, including but not limited to pipelines and/or communication cables, over and across the Leased Premises, and further, that Lessee shall take no measures to interfere with the construction or maintenance of said facilities and shall at all times allow ingress and egress to the Leased Premises by said successors, permittees, licensees or other persons provided that such shall not unreasonably interfere with Lessee's use of the Leased Premises.

Lessee acknowledges the fact that the herein leased property may contain fiber optic communication systems, Railway signal and train control cables and other utilities. Prior to any digging or subgrade work on the leased premises, you must call SUNSHINE for utility locations at 1-800-432-4770 and the Railway Signal Department at 904-826-2428 for signal and train control cable locations. Proper notification is required for cable locations and field inspections to protect against damages.

## 12. Termination

Either party may, in its discretion, for any reason whatsoever, terminate this lease at any time by the giving of 30 days notice to the other party as hereinafter provided.

## 13. Condition of Premises on Termination

The Lessee shall not mutilate, damage, misuse, or alter, the Leased Premises, but shall keep the same in good condition and repair, and upon the termination hereof deliver them up, in as good condition as they now are in, or may be put in by the Lessor, ordinary wear and tear, and damages by the elements without concurring fault on the part of the Lessee, excepted: any and all repairs, alterations or improvements made on the premises by the Lessor at Lessee's request shall be at Lessee's expense unless otherwise expressly agreed in writing.

Upon the termination or expiration of the Lease, Lessee shall surrender the Leased Premises to Lessor, broom clean and in the same condition as received except for ordinary wear and tear which Lessee was not otherwise obligated to remedy under any provision of this Lease. Lessee shall remove all equipment, materials, works, and personal property ("Lessee's Property") prior to termination or expiration of this Lease. Lessee shall repair, at Lessee's expense, any damage to the Premises or Building caused by the removal of any of Lessee's personal property, including but not

limited to furniture, machinery and equipment. In no event, however, shall Lessee remove any of the following materials or equipment without Lessor's prior written consent: any power wiring or power panels; lighting or lighting fixtures; millwork and cabinetry; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners, or any other heating or air conditioning equipment; fencing or security gates; plumbing fixtures, water fountains; or other similar building operating equipment and decorations. If Lessee fails to remove Lessee's Property, at Lessor's option such Lessee's Property will become the property of Lessor or at Lessor's option, may cause removal of the same from the hereby leased property or premises and/or storage thereof, and storage of any of Lessee's property and property of others placed by or with Lessee's permission or sufferance on the hereby leased property or premises. The reasonable cost or expense of removal and/or storage of any equipment, materials, works or personal property shall be paid by Lessee to Lessor forthwith upon demand for same.

#### 14. Lessee Improvements

Lessee agrees not to erect or cause to be erected any building or other structure, or any material addition to existing buildings or structures on the leased premises or any other improvements without first obtaining the approval in writing by Railway of the location, material and construction of the same, such approval by Railway not to be unreasonably withheld.

Lessee will not make or allow to be made any alterations in or to the Leased Premises without first obtaining the written consent of Lessor, which consent may be granted or withheld in Lessor's sole discretion. Lessor may require Lessee to provide demolition and/or lien and completion bonds in form and amount satisfactory to Lessor. All Lessee alterations will be accomplished in a good and workmanlike manner at Lessee's sole expense, in conformity with all Applicable Laws by a licensed and bonded contractor approved in advance by Lessor, such approval of contractor not to be unreasonably withheld or delayed. All contractor's performing alterations in the Leased Premises shall carry workers' compensation insurance, commercial general liability insurance, automobile insurance and excess liability insurance in amounts reasonably acceptable to Lessor and shall deliver a certificate of insurance evidencing such coverages to Lessor prior to commencing work in the Leased Premises. Upon completion of any such work, Lessee shall provide Lessor with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials. Any Lessee alterations to the Leased Premises made by or installed by either party hereto will remain upon and be surrendered with the Leased Premises and become the property of Lessor upon the expiration or earlier termination of this Lease without credit to Lessee; provided, however, Lessor, at its option, may require Lessee to remove any additions and/or repair any alterations to restore the Leased Premises to the condition existing at the time Lessee took possession, with all costs of removal, repair, restoration, or alterations to be borne by Lessee. This clause will not apply to moveable equipment, furniture or moveable trade fixtures owned by Lessee, which may be removed by Lessee at the end of the Lease Term if Lessee is not then in default and if such equipment and furniture are not then subject to any other rights, liens and interests of Lessor. Lessee will have no authority or power, express or implied, to create or cause any construction lien or mechanics' or materialmen's lien or claim of any kind against the Leased Premises or any portion thereof or any Railway property. Lessee will promptly cause any such liens or claims to be released by payment, bonding or otherwise within thirty (30) days after request by Lessor, and will indemnify Lessor against losses arising out of any such claim including, without limitation, legal fees and court

costs. NOTICE IS HEREBY GIVEN THAT LESSOR WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER LESSEE, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN THE PREMISES. LESSEE WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY LESSEE PROVIDING LABOR, SERVICES OR MATERIAL TO THE PREMISES.

15. Assignment

Lessee will not assign this Lease, in whole or in part, or sublease the Leased Premises, in whole or in part, without the prior written consent of Lessor, which consent will not be unreasonably withheld, subject to Lessor's right of recapture set forth below, and in no event will Lessee be released from any obligation or liability under this Lease following any such assignment or sublease. No sublessee of the Leased Premises or any portion thereof, may further assign or sublease its interest in the Leased Premises or any portion thereof. All legal fees and expenses incurred by Lessor in connection with the review by Lessor of Lessee's requested assignment or sublease pursuant to this Section, together with any legal fees and disbursements incurred in the preparation and/or review of any documentation, will be paid by Lessee within thirty (30) days of invoice for payment thereof, as additional rent. If the rent due and payable by any assignee or sublessee under any permitted assignment or sublease exceeds the Rent payable under this Lease for such space, Lessee will pay to Lessor all such excess rent and other excess consideration within ten (10) days following receipt thereof by Lessee.

Within fifteen (15) days after Lessor's receipt of Lessee's request for Lessor's consent to a proposed assignment or sublease, excluding any assignment or sublease to an affiliate of Lessee, Lessor shall have the right to require Lessee to reconvey to Lessor that portion of the Premises which Lessee is seeking to assign or sublet. Lessee shall reconvey that portion of the Premises in consideration of Lessor's release of Lessee from all future Rent and other obligations, which would not otherwise survive termination of the Lease, with respect to the portion of the Premises so reconveyed. Any such reconveyance shall be evidenced by an agreement reasonably acceptable to Lessor and Lessee in form and substance.

16. Care Around Tracks

Lessee shall adopt, monitor and enforce reasonable rules and regulations for the conduct of Lessee's employees, patrons, agents and contractors (including employees thereof) or any other persons using said premises to protect them from injury while on, about or near any track on or adjoining the Leased Premises.

17. Destruction or Damage to Leased Premises

If the Premises are at any time damaged or destroyed in whole or in part by fire, casualty or other causes, Lessor shall have sixty (60) days from such damage or destruction to determine in its sole discretion and inform Lessee whether Lessor will restore the Premises to substantially the condition that existed immediately prior to the occurrence of the casualty. If Lessor

determines not to restore the Leased Premises, it will notify Lessee and Lessee's sole remedy shall be to terminate the Lease upon prior written notice to Lessor. If Lessor elects to rebuild, Lessor shall complete such repairs to the extent of insurance proceeds within one hundred and eighty (180) days from the end of the sixty (60) day period. If such repairs have not been completed within that 180-day period, and Lessee desires to terminate the Lease as a result thereof, then Lessee must notify Lessor prior to Lessor's completion of the repairs of Lessee's intention to terminate this Lease. Lessor shall then have ten (10) days after Lessor's receipt of written notice of Lessee's election to terminate to complete such repairs (as evidenced by a certificate of completion). If Lessor does complete such repairs prior to the expiration of such ten-day cure period, Lessee shall have no such right to terminate this Lease. Lessee shall, upon substantial completion by Lessor, promptly and diligently, and at its sole cost and expense, repair and restore any improvements to the Leased Premises made by Lessee to the condition which existed immediately prior to the occurrence of the casualty. If, in Lessor's reasonable estimation, the Leased Premises cannot be restored within two hundred forty (240) days of such damage or destruction, then either Lessor or Lessee may terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the date such notice is given. Subsequent to Lessor's determination to restore the Leased Premises, and until the restoration of the Premises is complete, there shall be an abatement or reduction of the Rent in the same proportion that the square footage of the Leased Premises so damaged or destroyed and under restoration bears to the total square footage of the Leased Premises, unless the damaging event was caused by the negligence or willful misconduct of Lessee, its employees, officers, agents, licensees, invitees, visitors, customers, concessionaires, assignees, sub Lessees, contractors or subcontractors, in which event there shall be no such abatement.

18. Default

18.1 DEFAULT. The following will be events of default by Lessee under this Lease:

(a) Failure to pay when due any installment of Rent or any other payment required pursuant to this Lease;

(b) The filing of a petition for bankruptcy or insolvency under any applicable federal or state bankruptcy or insolvency law; an adjudication of bankruptcy or insolvency or an admission that it cannot meet its financial obligations as they become due, or the appointment of a receiver or trustee for all or substantially all of the assets of Lessee; the foregoing shall also apply to all Guarantors;

(c) A transfer in fraud of creditors or an assignment for the benefit of creditors, whether by Lessee or any Guarantor;

(d) Any act which results in a lien being filed against the Leased Premises, the Land, Buildings;

(e) The liquidation, termination or dissolution of Lessee or any Guarantor, or, if Lessee or any Guarantor is a natural person, the death of Lessee or such Guarantor;

(f) Failure to cure any non-monetary provision of this Lease within 20 days after written notice thereof to Lessee.

18.2 REMEDIES. In the event of any default hereunder by Lessee, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, the Lessor shall have the following rights and remedies, which are cumulative and not alternative:

(a) Lessor may terminate this Lease by notice to Lessee and retake possession of the Premises for Lessor's account. Lessee shall then quit and surrender the Premises to Lessor. Lessee's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder, including to the extent legally permissible, payment of all Rent and other charges until the date this Lease would have expired had such termination not occurred. If Lessor so elects, Rent shall be accelerated and Lessee shall pay Lessor damages in the amount of any and all sums that would have been due for the remainder of the Term.

(b) Lessor may enter the Premises as agent of the Lessee to take possession of any property of the Lessee on the Premises, to store such property at the expense and risk of the Lessee or to sell or otherwise dispose of such property in such manner as the Lessor may see fit without notice to the Lessee. Re-entry and removal may be effected by summary dispossession proceedings, by any suitable action or proceeding, or otherwise. Lessor shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(c) Lessor may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any Rent then attainable; grant any concessions of Rent, and agree, at Lessee's expense, to paint or make any special repairs, alterations, and decorations for any new Lessee as it may deem advisable in its sole and absolute discretion. Lessor shall be under no obligation to relet or to attempt to relet the Premises greater than that imposed by law.

(d) Lessor may remedy or attempt to remedy any default of the Lessee under this Lease for the account of the Lessee and to enter upon the Premises for such purposes. No notice of the Lessor's intention to perform such covenants need to be given the Lessee unless expressly required by this Lease. The Lessor shall not be liable to the Lessee for any loss or damage caused by acts of the Lessor in remedying or attempting to remedy such default and the Lessee shall pay to the Lessor all expenses incurred by the Lessor in connection with remedying or attempting to remedy such default. Any expenses incurred by Lessor shall accrue interest from the date of payment by Lessor until repaid by Lessee at the highest rate permitted by law.

### 18.3 COSTS.

Lessee shall pay to Lessor on demand all costs incurred by Lessor, including attorneys' fees and costs, (whether incurred in preparation for or at trial, on appeal, or in bankruptcy), incurred by Lessor in enforcing any of the obligations of Lessee under this Lease. In addition, upon any default by Lessee, Lessee shall also be liable to Lessor for the expenses to which Lessor may be put in re-entering the Premises, reletting the Premises and putting the Premises into the condition

necessary for such reletting (including attorneys' fees and disbursements, marshal's fees, and brokerage fees, in so doing), and any other expenses reasonably incurred by Lessor.

18.4 WAIVER.

No delay or omission by Lessor in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

18.5 DEFAULT BY LESSOR.

In the event of any default by Lessor of any material term of this Lease, Lessee will give Lessor written notice specifying such default with particularity, and Lessor shall have a period of thirty (30) days following the date of such notice in which to commence the appropriate cure of such default. Unless and until Lessor fails to commence and diligently pursue the appropriate cure of such default after such notice or complete same within a reasonable period of time, Lessee shall not have any remedy or cause of action by reason thereof. Notwithstanding any provision of this Lease, Lessor shall not at any time have any personal liability under this Lease, and Lessee's sole remedy with respect thereto shall be termination of the Lease.

19. Hold Over

In addition to and not limiting any other rights or remedies which Lessor may have on account of Lessee holding over without written consent of Lessor, Lessee shall pay to Lessor any and all direct and consequential damages incurred by Lessor on account of such unapproved holding over including claims by Lessees entitled to future possession.

20. Condemnation

If the property or any part thereof wherein the demised premises are located shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, this lease, at the option of the Lessor, shall forthwith terminate and the Lessee shall have no claim or interest in or to any award of damages for such taking.

21. Quiet Enjoyment

If Lessee pays the rent and all other charges and fully performs all of its obligations under this Lease, Lessee shall be entitled to peaceful and quiet enjoyment of the Premises for the full Term without interruption or interference by Lessor or any person claiming through Lessor.

22. No Waiver or Modification

None of the provisions hereof shall be waived or modified, except by mutual agreement, in writing, and no alleged verbal or written inducement prior to execution nor subsequent verbal waiver, or modification, shall be binding under any circumstances. Further, that this lease constitutes the entire understanding of the parties and that neither the failure of the Lessor to enforce



each and every provision, nor any course of conduct by the Lessor shall be considered as a waiver of these provisions.

23. Successors and Assigns

The provisions hereof shall be binding upon and inure to the benefit of the successor, executors, administrators and permitted assigns of the respective parties.

24. Special Notice Regarding Radon Gas

Lessee is hereby notified, in accordance with Section 404.056(8), Florida Statutes, that Radon Gas is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over a period of time. Levels of Radon that exceed federal and state guidelines have been found in buildings in the State of Florida. Lessee is further notified that additional information regarding Radon Gas, and the testing for Radon Gas, may be obtained from the Public Health Units of the various counties.

25. Restrictions

Lessee agrees that no plants, shrubbery, trees or other vegetation that would obstruct the view of motor vehicles or train crews using a crossing at grade, or interfere with the operation of trains, will be placed on the above described property; in addition to the above restriction, no plants, shrubbery, trees or other vegetation having a height of more than two (2) feet will be placed within two hundred and fifty (250) feet of any at grade street crossing, and if such vegetation exceeds two (2) feet in height, the Railway may trim such vegetation to a two (2) foot height at Lessee's expense; that said plants, shrubbery, trees or other vegetation shall be trimmed by the Lessee so as to maintain this distance from the centerline of the nearest track of twenty-five (25) feet and if such vegetation is closer than twenty-five (25) feet from the centerline of the nearest track, the Railway may trim or remove such vegetation so that no vegetation is within twenty-five (25) feet of the centerline of the nearest track at Lessee's expense. However, this restriction in no way limits the indemnification provisions of this Lease as set forth in Paragraphs 8 and 9 hereof. Also, no plants, shrubbery, trees or other vegetation of a hazardous nature that might produce injury to any person coming in contact with said plants, shrubbery, trees or other vegetation will be placed upon said property of Railway by the Lessee. The placement of any wells by the Lessee on the property of the Railway is strictly prohibited.

26. Notices

Any notice to be given or to be served upon any party hereunder, in connection with this lease, must be in writing and must be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter, containing such notice, properly addressed, with postage prepaid, is deposited in the U.S. Mail; or, if given otherwise than by certified or registered mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be addressed to the parties herein at the following addresses:

TO LESSEE: Miami Dade County  
Public Works Department  
111 N. W. 1<sup>st</sup> Street  
Suite 1510  
Miami, Florida 33128-1970

IN WITNESS WHEREOF, the parties have hereto set their names and seals this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

Signed, sealed and delivered  
in the presence of:

**FLORIDA EAST COAST RAILWAY,  
L.L.C.** A Limited Liability Company

\_\_\_\_\_  
Witness as to Railway

By: \_\_\_\_\_ (SEAL)  
J. D. McPherson, President and COO

\_\_\_\_\_  
Witness as to Railway

Attest: \_\_\_\_\_  
Assistant Secretary

Date of Execution: \_\_\_\_\_

**MIAMI / DADE COUNTY,**  
a political subdivision of the State of Florida,  
acting by and through its Board of County  
Commissioners

\_\_\_\_\_  
Witness as to Industry

(Print Name) \_\_\_\_\_

\_\_\_\_\_  
Witness as to Industry

(Print Name) \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
County Manager

(Print Name) \_\_\_\_\_

Attest: \_\_\_\_\_  
County Clerk

(Print Name) \_\_\_\_\_

Date of Execution: \_\_\_\_\_

# DADE COUNTY, FLORIDA

AVENUE

BOULEVARD

T. 53 S. ~ R. 41 E.

T. 53 S. ~ R. 42 E.

T. 54 S. ~ R. 41 E.

T. 54 S. ~ R. 42 E.

10' SIDEWALK SERVING  
DADE COUNTY

← TO MAIN TRACK

P&O LEAD TRACK

308'

312'

AREA TO SERVE  
ZAMINCO FREEDOM, INC.  
(FENCE BY LESSEE)

SECOND

N. E. 6<sup>TH</sup>

STREET

BISCAYNE



REV. NO.	DATE	BY	DESCRIPTION
----------	------	----	-------------

## REVISIONS

FLORIDA EAST COAST RAILWAY CO.



OFFICE OF INDUSTRIAL DEVELOPMENT  
AND REAL ESTATE  
ST. AUGUSTINE, FLORIDA

MIAMI, FLORIDA

LEASE OF SPACE TO  
DADE COUNTY

DRAWN BY RJD	S.P. LOC 365 +	SCALE 1" = 100'
CHECKED BY	DATE 4/14/88	
3/6/86 - 219		A - 897

20